

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE**

NICOLE JOHNSON,

Plaintiff,

v.

CAUSE NO.: 4:21-CV-65-TLS

MARTIN J. O'MALLEY, Commissioner of
the Social Security Administration,

Defendant.

OPINION AND ORDER

This matter is before the Court on a Motion for an Award of Attorney Fees Under 42 U.S.C. § 406(b) [ECF No. 17], filed on March 20, 2024. The Commissioner does not object to the motion. ECF No. 18. The case was reassigned to the undersigned on May 31, 2024. ECF No. 19. For the reasons stated below, the motion is GRANTED.

BACKGROUND

On May 31, 2016, the Plaintiff filed an application for disability insurance benefits, alleging disability beginning on January 15, 2015. AR 80–81, ECF No. 7. The Plaintiff challenged the denial of benefits in federal court, and the Court reversed and remanded for further proceedings. *Johnson v. Saul*, 4:19-cv-95 (Nov. 30, 2020). Equal Access to Justice Act (EAJA) fees were awarded in the amount of \$7,000.00. *Id.* (Feb. 4, 2021). A second hearing was held on July 13, 2021, resulting in an unfavorable decision. AR 734–46. The Plaintiff filed a Complaint in this case, and the Court again reversed and remanded for further proceedings. ECF No. 12. On January 17, 2023, the Court awarded the Plaintiff's attorney EAJA fees in the amount of \$9,772.00. ECF No. 16. Ultimately, the Social Security Administration awarded the Plaintiff

past-due benefits, twenty-five percent of which is \$29,636.42. *See* Notice of Award 3, ECF No. 17-5.

In the instant motion, the Plaintiff's attorney requests an award of attorney fees under 42 U.S.C. § 406(b) in the amount of \$29,636.42. Pl. Mot. 2, ECF No. 17. In the retainer agreement, the Plaintiff agreed to pay his attorney twenty-five percent of all past-due benefits. *See* Fee Agreement, ECF No. 17-1. Counsel represents that, if fees are awarded under § 406(b), he will refund to the Plaintiff the \$16,772.00 in EAJA fees previously awarded. *See* Pl. Mot. ¶ 9.

ANALYSIS

The Plaintiff's counsel, subject to refunding \$16,772.00 in EAJA fees, requests \$29,636.42 in attorney's fees pursuant to 42 U.S.C § 406(b). The Social Security Act allows for a reasonable fee to be awarded both for representation at the administrative level, *see* 42 U.S.C. § 406(a), as well as representation before the Court, *see* 42 U.S.C § 406(b). *Culbertson v. Berryhill*, 139 S. Ct. 517, 520 (2019) (quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002)). Under § 406(b), the Court may award a reasonable fee to the attorney who has successfully represented the claimant in federal court, not to exceed twenty-five percent of the past-due benefits to which the social security claimant is entitled. 42 U.S.C. § 406(b)(1)(A); *Gisbrecht*, 535 U.S. at 792. The reasonableness analysis considers the "character of the representation and the results the representative achieved." *Gisbrecht*, 535 U.S. at 808. Reasons to reduce an award include an attorney's unjustifiable delay or if the past-due benefits are large in comparison to the amount of time an attorney has spent on a case. *Id.* In addition, an award of EAJA fees under 28 U.S.C. § 2412 offsets an award under § 406(b). *Id.* at 796.

In this case, the requested amount in attorney's fees is consistent with the contingency agreement, and counsel will refund the \$16,772.00 in EAJA fees to the Plaintiff. Counsel represents that 81.8 attorney hours were spent in federal court on this case, resulting in an

effective hourly rate of \$362.30. *See* Pl. Mot. ¶ 14. This hourly rate is reasonable given the contingent nature of this case, the favorable past-due benefit award, and the benefit the Plaintiff will receive in future payments. *See Long v. Saul*, No. 3:19-CV-155, 2021 WL 2588110, at *1 (N.D. Ind. June 24, 2021) (noting that an hourly rate of \$1,711.96 is within the range of rates approved by courts); *Niebuhr v. Saul*, No. 18-CV-720, 2020 WL 6484488, at *1 (W.D. Wis. Nov. 4, 2020) (effective hourly rate of \$579); *Koester v. Astrue*, 482 F. Supp. 2d 1078, 1083 (E.D. Wis. 2007) (collecting cases showing that district courts have awarded attorney's fees with hourly rates ranging from \$400 to \$1,500).

CONCLUSION

For the reasons stated above, the Court hereby GRANTS the Motion for an Award of Attorney Fees Under 42 U.S.C. § 406(b) [ECF No. 17] and AWARDS attorney fees under 42 U.S.C. § 406(b) in the amount of \$29,636.42. The Court ORDERS the Plaintiff's attorney to refund to the Plaintiff the \$16,772.00 in EAJA fees previously awarded in this case.

SO ORDERED on June 4, 2024.

s/ Theresa L. Springmann

JUDGE THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT